IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 385/2005

Narayan Datta Naik and another. ..... Petitioners.

V/s.

State of Goa and others. ..... Respondents.

Mr. Oswaldo de Ataide, Advocate for the petitioners.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Govt. Advocate for the State.

Ms. Harsha Naik, Advocate for respondent No.6.

Mr. S. D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for respondents No.10 and 11.

Mr. S. G. Dessai, Senior Advocate with Mr. A. Palekar, Advocate for respondents No.12 and 17.

Mr. S. D. Padiyar, Advocate for respondent No.15.

Mr. S. G. Bhobe, Advocate for respondent No.16.

CORAM : SMT. RANJANA P. DESSAI &
N.A. BRITTO, JJ.

DATE : 13TH JUNE, 2006.

P.C.

The petitioners are share holders of Comunidade of Sancoale. The Comunidade of Sancoale owns land surveyed under No.68/1, part of which is acquired for the purpose of four lane highway. Respondent No.15, Bharat Petroleum has set up a retail

outlet on plot No.4 which is part of an agricultural land surveyed under No.69/1. According to the learned Counsel for respondent No.15, respondent No.15 is presently using access/road from survey No.69/1. It is, inter alia, the grievance of the petitioners that NOC has been granted by respondent No.2 for using Comunidade's property surveyed under No.68/1 as an access to respondent No.15's outlet, in contravention of law, namely the Goa Land Revenue Code, 1968 for want of sanad for conversion of land from agricultural to non-agricultural use and for want of change of land use shown in the regional plan as Zone-I. Our attention is drawn to the order passed by this Court dated 20.12.2005. This Court has recorded the statement made by the learned Counsel for the petitioners that respondent No.15 has filed affidavit and in paragraph 22 of the said affidavit, it is specifically stated by respondent No.15 that on 4.5.05 at the hearing held before respondent No. 2, respondent No.15 withdrew the claim of access through survey No.68/1. This Court has further recorded the statement made by the learned Counsel for respondent No.15 that as on that day respondent No.15 was not using the access through Survey No.68/1. Even today, the learned Counsel for respondent No.15 reiterates that respondent No.15 is not using access through survey No.68/1.

2. The learned Advocate General has pointed out that on 21.3.06, a statement of learned Counsel for respondent No.5 was

recorded by this Court that show cause notice dated 17.2.06 has been issued to respondents No.10, 11, 12 and 15. A statement was also made on behalf of respondent No.5 that the said show cause notice would be disposed of within a period of eight weeks. The learned Advocate General has pointed out that the show cause notice has been disposed of by respondent No.5. A copy of the final order dated 12.5.06 has been placed on record by the learned Advocate General. We may quote the relevant part of the said order, which reads thus :

> "...said two parts (A&B) belonging to the Comunidade of Sancoale surveyed under survey no.68/0 are open and vacant from any encroachments & the same is evident from the site inspection report of surveyor/expert appointed by Office."

3. The learned Counsel for the petitioners disputes the statement made by the Counsel for respondent No.15 that respondent No.15 is not using the access through Survey No.68/1. He also states that the order dated 12.5.06 does not depict the correct state of affairs. The learned Counsel for the petitioner states that there is no clear finding in the said order as to whether the said survey number is being used by respondent No.15 or not. In view of the rival submissions, we feel that the questions involved in this writ petition are disputed questions of fact. We are, therefore, unable to

deal with them in our writ jurisdiction. However, if the petitioners are so advised, they may adopt appropriate legal proceedings to agitate their grievances.

4. The learned Counsel for the petitioners contended that in this writ petition, another important issue of conversion of land is involved. In this connection, he has relied upon a Judgment of this Court in **Gorakshwadi-Shantinagar Gramvikas Samitee and ors. vs. State of Goa and ors.,** 2000(2) Goa L.T. 407. It is pointed out to us by Mr. Dessai, learned Senior Counsel for respondent No.12 that respondent No.12 has already made an application dated 2.5.06 under Section 32(1) of the Goa Land Revenue Code, 1968 and the same is pending. We record the statement of the learned Advocate General that the said application will be decided in accordance with law. Needles to say that if the petitioners are aggrieved by the order of the Collector passed on the said application, they would be at liberty to adopt appropriate proceedings challenging the same.

5. Our attention is also drawn to application dated 9.8.05 submitted by respondent No.15 to the District Magistrate, South Goa District, at Margo. Admittedly, the said application is pending. The learned Counsel for the petitioners has made a grievance that the NOC issued under the Petroleum Act is invalid inasmuch as the revised plan has not been approved. Since the application dated

9.8.05 is pending, the District Magistrate may pass appropriate orders thereon after hearing the petitioners and respondent No. 15 within a period of eight weeks from the date of receipt of this order by him.

6. The petition is disposed of in the aforestated terms. We, however, make it clear that we have not expressed any opinion on the issues involved in this writ petition.

SMT. RANJANA P. DESSAI, J.

N.A. BRITTO, J.

ssm.